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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 693

L. & C. MAYERS CO., INC.,
Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ANDREW B. TRUDGIAN,
Counsel for Petitioner.

THE COURT PRESS, N. Y. C.

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No.

L. & C. MAYERS CO., INC.,

Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Petitioner respectfully prays that a writ of certiorari issue to review a judgment of the Circuit Court of Appeals for the Second Circuit entered in the above cause on November 21, 1942.

Opinion Below.

The opinion of the Tax Court of the United States (R. 33-42) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 65) has not been reported.

Jurisdiction.

The judgment of the United States Circuit Court of Appeals was entered November 21, 1942. The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented.

For each of the fiscal years ended June 30, 1937, and June 30, 1938, the respondent disallowed deductions for compensation to each of the taxpayer's two chief officers in excess of $20,000 per year, which disallowance amounted to $16,000 for 1937 and $20,000 for 1938. The Circuit Court of Appeals of the Second Circuit has held that it was without jurisdiction to review such disallowance of the respondent which made the above disallowance and possibly this was true with respect to the Tax Court. The questions presented are:

I—Whether the Circuit Court of Appeals and the Tax Court have jurisdiction to review the findings of the Commissioner as to the reasonableness of deductions for salaries?

II—Whether a deduction for salaries is to be allowed if it is reasonable or a disallowance of salaries by the Commissioner is to be sustained unless it exceeds any possibly reasonable limits?

III—Whether the salaries paid to each of the taxpayer's two officers for each of the two years were reasonable in amount and therefore deductible by the taxpayer on its income tax return?

Statement.

The facts as found by the Tax Court of the United States (R. 33-37), and as contained in the statement of evidence (R. 48-60) are as follows:

The taxpayer was engaged in the business of distributing diamonds, watches, jewelry and giftware (R. 34). It had only two officers, whose salaries are in question herein, who divided equally the duties of administering the business, one in charge of diamonds, watches and jewelry, and the other in charge of giftware which includes silverware, leather goods, luggage, electrical appliances and similar goods (R. 34, 35).

In the taxable year ended June 30, 1937, the taxpayer had gross sales in the sum of $2,566,028.72, and after deducting the officers' salaries in question herein, had a net income of $144,044.10 (R. 35). In the taxable year ended June 30, 1938, the comparable figures were $2,642,561.10 for gross sales and $211,769.12 for net income (R. 35).

Each officer was an expert in his particular field, having extensive knowledge of the merchandise he handled (R. 35), and the officer in charge of diamonds, watches and jewelry had taken several courses in his field at two universities (R. 56) and made annual trips abroad to the world markets for the merchandise he handled (R. 35, 57). All other employees of the taxpayer performed subordinate duties (R. 49) so that all executive duties were performed by the two officers (R. 48), and when one was abroad, all these duties were assumed by the other (R. 50). Practically the entire business of the taxpayer revolved around the issuing of its annual catalogue (R. 52). The preparation of the catalogue, including the selec-

tion of items, the method of showing them, the type of cuts, and their description and selling price was supervised by these two officers (R. 55), each preparing that part of the catalogue which covered the merchandise he was in charge of (R. 34, 35). The compilation of the catalogue took from April 15th to November 1st (R. 58). Each officer worked approximately eight hours a day except during the Christmas rush season when they worked very long hours (R. 35). Each officer took only a two weeks vacation in each of the two years involved (R. 35). At a special meeting of the Board of Directors of the taxpayer, held December 31, 1936 (R. 59, 35), the salaries of these two officers were increased to $30,000. Prior to 1932, the salary of each officer was $36,000 per annum, their salaries having been reduced during the depression rather than reducing those of their employees (R. 52).

By letter dated April 8, 1940 (R. 11), the respondent disallowed a portion of the salaries of the officers for the years ended June 30, 1937, and June 30, 1938, and found deficiencies against the petitioner of $4,168.97 in income tax, and $4,641.81 in excess profits tax for the year ended June 30, 1937, and $3,550.32 of income tax and $11,754.13 in excess profits tax for the year ended June 30, 1938. The Tax Court of the United States sustained this action of the Commissioner (R. 43) and on appeal to the Circuit Court of Appeals, Second Circuit, this order was affirmed (R. 67).

Specification of Errors to Be Urged.

The Circuit Court of Appeals erred:

1. In holding that the action of the respondent in reducing the allowable salaries of the petitioner's officers was beyond the reach of its review.

2. In holding that a disallowance of salaries by the Commissioner of Internal Revenue (regardless of whether such salaries may have constituted a reasonable deduction) is not to be disturbed unless it exceeds any possibly reasonable limits.

3. In failing to hold that the petitioner had sustained its burden of proving the reasonableness of the salaries paid to the petitioner's officers.

4. In failing to hold that the resolution of the petitioner's Board of Directors increasing the salaries of its officers created an inference that the salary allowance was reasonable.

5. In failing to hold that the decision of the Tax Court of the United States in the instant case was against the weight of the evidence.

6. In affirming the decision of the Tax Court of the United States.

Reasons for Granting the Writ.

The decision of the Circuit Court of Appeals, Second Circuit, in the instant case is in direct conflict with the decision of the Circuit Court of Appeals, Fourth Circuit, in the case of *Ox Fibre Brush Co.* v. *Blair,* 32 Fed. (2d) 42, affirmed in *Lucas* v. *Ox Fibre Brush Co.,* 281 U. S. 115, and with the decisions of the Circuit Court of Appeals, Sixth Circuit, in the cases of *Toledo Grain & Milling Co.* v. *Commissioner,* 62 Fed. (2d) 171, and *The Capitol-Barg Dry Cleaning Co.* v. *Commissioner,* decided December 2, 1942, which has not been reported. It is also in conflict with the principles enunciated by this court in the cases of *Wickwire* v. *Reinicke,* 275 U. S. 101, and *Williamsport*

Wire Rope Co. v. *United States*, 277 U. S. 551, to the effect that a decision of the Commissioner of Internal Revenue is not conclusive but furnishes only *prima facie* evidence of its correctness which is subject to review by the courts in appropriate proceedings; and further conflicts with the principles enunciated by this court in the cases of *Helvering* v. *Rankin*, 295 U. S. 123; *General Utilities & Operating Co.* v. *Helvering*, 296 U. S. 200; *Helvering* v. *Tex.-Penn Oil Co.*, 300 U. S. 481; *Colorado Nat. Bank of Denver* v. *Commissioner*, 305 U. S. 23; and *Helvering* v. *Kehoe*, 309 U. S. 277, to the effect that on review by the Circuit Court of Appeals, the findings of fact by the Tax Court of the United States are not conclusive unless supported by substantial evidence.

Conclusion.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

ANDREW B. TRUDGIAN,
Counsel for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

Argument.

POINT I.

A decision of the Commissioner of Internal Revenue is not conclusive but only furnishes *prima facie* evidence of its correctness.

There is a well established rule of this Court to the effect that a deficiency assessment of the Commissioner of Internal Revenue is not conclusive, but is only *prima facie* evidence of its correctness, and that this is subject to review by the Tax Court of the United States and by the courts. *Wickwire* v. *Reinecke,* 275 U. S. 101; *Williamsport Wire Rope Co.* v. *United States,* 277 U. S. 551; *Helvering* v. *Taylor,* 293 U. S. 507 Upon contesting the Commissioner's deficiency assessment the burden of proof is upon the taxpayer, but this burden can be overcome by the submission of evidence, and as pointed out in the case of *Helvering* v. *Taylor* (*supra*), the fact that the Commissioner's determination of a deficiency is arbitrarily made may reasonably be deemed sufficient to require the Tax Court to set it aside. This rule of law has been ignored by the Court below in its decision.

POINT II.

The findings of facts of the Tax Court of the United States are subject to review by the Circuit Court of Appeals to determine if they are supported by evidence.

Section 1141 of the Internal Revenue Code grants the Circuit Courts of Appeal and the United States Court of Appeals for the District of Columbia jurisdiction to review decisions of the Tax Court of the United States, and as part of that jurisdiction grants the power "to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision of the Board, with or without remanding the case for a re-hearing as justice may require". This provision of the Code has been consistently interpreted by this Court to hold that the findings of facts by the Tax Court of the United States are conclusive unless unsupported by substantial evidence and that the question of whether there is sufficient evidence to support the findings of fact by the Tax Court is a question of law to be passed upon by the Circuit Court of Appeals. *Helvering* v. *Rankin*, 295 U. S. 123; *General Utilities & Operating Co.* v. *Helvering*, 296 U. S. 200; *Helvering* v. *Tex-Penn Oil Co.*, 300 U. S. 481; *Colorado Nat. Bank of Denver* v. *Commissioner*, 305 U. S. 23; *Helvering* v. *Kehoe*, 309 U. S. 277. In the *Colorado National Bank* case both the majority and the dissent agreed on the principle enunciated above, differing only on the question of whether there was substantial evidence presented before the Tax Court to support its findings of facts. Notwithstanding the well established rule on this point, the Court in the instant case erroneously held that not only did

it not have power to review the decision of the Tax Court, but also the ruling of the Commissioner, stating, "we do not think it necessary to state the details of the business, for it is clear that such reductions as these are beyond the reach of our review".

POINT III.

A taxpayer is allowed to deduct reasonable salaries for personal services actually rendered to it.

Section 23 (a) of the Internal Revenue Code permits a deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered". This section merely requires that a salary deduction be reasonable. The respondent's own regulations, Regulations 94, Article 23 (a) (6) confirms the correctness of this statement. As stated therein salaries which are reasonable and are in fact payments purely for services, may be deducted. There is no authority under the law and regulations for the doctrine enunciated by the Circuit Court of Appeals that a salary allowance made by the Commissioner is not to be interfered with unless "the allowance exceeds any possibly reasonable limits".

POINT IV.

The action of the Board of Directors of a corporation in voting salaries for any given period is entitled to the presumption that such salaries are reasonable and proper.

As held by the Circuit Courts of Appeals of the Fourth and Sixth Circuits, in determining the reasonableness of a salary deduction under Section 23 (a) of the Internal Revenue Code effect must be given to the action of the Board of Directors of a corporation, in setting salaries, to the extent of creating a presumption of their correctness. *Ox Fibre Brush Co.* v. *Blair,* 32 Fed. (2d) 42 (4th Circuit); *Toledo Grain & Milling Co.* v. *Commissioner,* 62 Fed. (2d) 171 (6th Circuit); *The Capitol-Barg Dry Cleaning Co.* v. *Commissioner* (6th Circuit), decided December 2, 1942, as yet not reported. As stated in the *Ox Fibre* case, this presumption must be construed in connection with the principle that the burden of proof rests upon the taxpayer. The taxpayer is still required to prove that the salary paid to its officers is both reasonable and necessary, but once having proved the type and nature of the services of the officers, the presumption then takes effect and the exact amount of the salary payment is presumed to be correct. The *Ox Fibre* case was before this Court and was affirmed in the case of *Lucas* v. *Ox Fibre Brush Co.,* 281 U. S. 115. While this Court did not discuss this particular presumption, the fact that it affirmed the decision of the Circuit Court of Appeals indicates that it was in concurrence with it.

POINT V.

The findings of facts of the Tax Court of the United States were contrary to the weight of the evidence.

In the instant case the respondent offered no evidence to support his disallowance, but on the contrary the uncontroverted evidence in the case fully established the correctness of the petitioner's salary deductions. The business of petitioner had been established by its two officers in 1912, and from a small beginning had been built up by them to the point where its volume was in excess of $2,600,000 annually, and where profits, after the deduction of officers' salaries, were $144,000 for the fiscal year ended June 30, 1937, and $211,000 for the fiscal year ended June 30, 1938. These officers were experienced in their fields and diligent in their duties. Prior to the depression they had drawn higher salaries than those involved in the instant case. Under the principles enunciated by the Circuit Court of Appeals of the Fourth and Sixth Circuits the petitioner is entitled to deduct the salaries paid by it to its officers.

CONCLUSION.

In view of the conflict of the decision of the Court below with various decisions of this Court, and the other circuits, and because of the widespread effect of the principles involved, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ANDREW B. TRUDGIAN,
Counsel for Petitioner.

Appendix.

Revenue Act of 1936, c. 690, 49 Stat. 1648.

Section 23 (a)—Deductions from Gross Income:

In computing net income there shall be allowed as deductions:

(a) Expenses.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered * * *.

Internal Revenue Code, Act. Feb. 10, 1939, c. 2, 53 Stat. 1.

Sec. 1141. Courts of Review.

(a) Jurisdiction.—The Circuit Courts of Appeals and the United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction to review the decisions of the Board, * * *.

(c) Powers.—

(1) To affirm, modify or reverse.—Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision of the Board, with or without remanding the case for a rehearing, as justice may require. * * *

Sec. 272. Procedure in General.

[As amended by Sec. 168, Revenue Act of 1942, c. 619, 56 Stat. ——.]

(a) (1) Petition to Board of Tax Appeals.—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed * * *, the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. * * *

Sec. 1116. Hearings.

Notice and opportunity to be heard upon any proceeding instituted before the Board shall be given to the taxpayer and the Commissioner. * * *

Treasury Regulations 94 (1936 Ed.),
Article 23 (a)-6. Compensation for personal services.

Among the ordinary and necessary expenses paid or incurred in carrying on any trade or business may be included a reasonable allowance for salaries or other compensation for personal services actually rendered. The test of deductibility in the case of compensation payments is whether they are reasonable and are in fact payments purely for services. This test and its practical application may be further stated and illustrated as follows:

(1) Any amount paid in the form of compensation, but not in fact as the purchase price of services, is not deductible. (a) An ostensible salary paid by a corporation may be a distribution of a

dividend on stock. This is likely to occur in the case of a corporation having few shareholders, practically all of whom draw salaries. If in such a case the salaries are in excess of those ordinarily paid for similar services, and the excessive payments correspond or bear a close relationship to the stockholdings of the officers or employees, it would seem likely that the salaries are not paid wholly for services rendered, but that the excessive payments are a distribution of earnings upon the stock. (b) An ostensible salary may be in part payment for property. This may occur, for example, where a partnership sells out to a corporation, the former partners agreeing to continue in the service of the corporation. In such a case it may be found that the salaries of the former partners are not merely for services, but in part constitute payment for the transfer of their business.

(2) The form or method of fixing compensation is not decisive as to deductibility. While any form of contingent compensation invites scrutiny as a possible distribution of earnings of the enterprise, it does not follow that payments on a contingent basis are to be treated fundamentally on any basis different from that applying to compensation at a flat rate. Generally speaking, if contingent compensation is paid pursuant to a free bargain between the employer and the individual made before the services are rendered, not influenced by any consideration on the part of the employer other than that of securing on fair and advantageous terms the services of the individual, it should be allowed as a deduction even though in the actual working out of the contract it may prove

to be greater than the amount which would ordinarily be paid.

(3) In any event the allowance for the compensation paid may not exceed what is reasonable under all the circumstances. It is in general just to assume that reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises under like circumstances. The circumstances to be taken into consideration are those existing at the date when the contract for services was made, not those existing at the date when the contract is questioned.

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513036—43

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 693

L. & C. MAYERS CO., INC., PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 37–42) is not reported. The opinion of the Circuit Court of Appeals (R. 65–66) is reported at 131 F. 2d 309.

JURISDICTION

The judgment of the Circuit Courts of Appeals was entered November 21, 1942 (R. 67–68). The petition for a writ of certiorari was filed February 1, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The Commissioner of Internal Revenue determined that the deduction claimed by petitioner for the salaries of its two officers was in excess of the "reasonable allowance" permitted by Section 23 (a) of the Revenue Act of 1936, and he accordingly reduced the deduction. The Board of Tax Appeals found that the petitioner had not sustained the burden of proving the Commissioner's determination erroneous. Was the Circuit Court of Appeals justified in affirming where the record supported the determinations below?

STATUTE AND REGULATIONS INVOLVED

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> SEC. 23. DEDUCTIONS FROM GROSS INCOME.
>
> In computing net income there shall be allowed as deductions:
>
> (a) *Expenses.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * *.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

> ART. 23 (a)-6. *Compensation for personal services.*—Among the ordinary and necessary expenses paid or incurred in carrying on any trade or business may be included a reasonable allowance for salaries

or other compensation for personal services actually rendered. The test of deductibility in the case of compensation payments is whether they are reasonable and are in fact payments purely for services. This test and its practical application may be further stated and illustrated as follows:

(1) Any amount paid in the form of compensation, but not in fact as the purchase price of services, is not deductible. (*a*) An ostensible salary paid by a corporation may be a distribution of a dividend on stock. This is likely to occur in the case of a corporation having few shareholders, practically all of whom draw salaries. If in such a case the salaries are in excess of those ordinarily paid for similar services, and the excessive payments correspond or bear a close relationship to the stock holdings of the officers or employees, it would seem likely that the salaries are not paid wholly for services rendered, but that the excessive payments are a distribution of earnings upon the stock. * * *

* * * * *

(3) In any event the allowance for the compensation paid may not exceed what is reasonable under all the circumstances. It is in general just to assume that reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises under like circumstances. The circumstances to be taken into consideration are those existing at the date when

the contract for services was made, not those existing at the date when the contract is questioned.

STATEMENT

The facts found by the Board of Tax Appeals may be summarized as follows:

The taxpayer was engaged in the business of distributing diamonds, watches, jewelry and gift wares, mostly by mail order pursuant to catalogue. It had six sales offices and employed 13 salesmen. Its fiscal year ended June 30. (R. 34, 35.)

Taxpayer's stock was wholly owned by L. & C. Mayers Importing Corporation. Lawrence S. Mayers and Chauncey M. Mayers each owned one-fourth of the outstanding common stock of the Importing Company; their wives owned the remainder of the common and all of the preferred stock. (R. 34, 50.)

The taxpayer's board of directors consisted of the two Mayers brothers and their father. The brothers were the sole officers of the corporation, dividing the duties of administering the business equally between them. (R. 34.) They were also officers of the Importing Company and received compensation from it (R. 35).

Lawrence Mayers had charge of merchandising the gift wares and editing and assembling of that part of the taxpayer's annual catalogue which related to such merchandise. He also supervised the salesmen. Chauncey Mayers had charge of

the merchandising and cataloguing of diamonds, watches and jewelry. In each of the taxable years he made a trip to Europe to purchase diamonds, but it was not clearly shown whether he did so on behalf of petitioner or on behalf of the Importing Company. Both brothers had extensive knowledge of the merchandise which they handled. Each worked approximately eight hours a day, but longer hours during the holiday season. They took vacations of two weeks in each of the taxable years. (R. 34–35, 42.)

Prior to 1937, the annual salaries of Lawrence and Chauncey Mayers as officers of the taxpayer were approximately $20,000 each. At a special meeting of the taxpayer's board of directors held on December 31, 1936 (R. 59), at which the brothers were present, their salaries were fixed at $30,000 each, dating retroactively from July 1, 1936. During the fiscal year ended June 30, 1938, the board of directors again fixed their salaries at $30,000 per year each. They drew their salaries monthly throughout the taxable years 1937 and 1938. (R. 35.)

The taxpayer had gross sales in amounts exceeding $2,500,000 in each of the taxable years ending June 30, 1937, and 1938. It reported a net income of $144,044.10 for the taxable year 1937 and $211,769.12 for the taxable year 1938. (R. 35.)

The Commissioner disallowed deductions for compensation to the brothers in excess of $20,000

each (R. 35). The Board of Tax Appeals sustained the Commissioner's action (R. 43), and the Circuit Court of Appeals affirmed (R. 66).

ARGUMENT

The decision below is in accord with the familiar rules governing the reviewability of determinations by the Board of Tax Appeals on issues of fact. *E. g., Wilmington Trust Co.* v. *Commissioner,* 316 U. S. 164; *Helvering* v. *Kehoe,* 309 U. S. 277; *L. E. Pinkham Med. Co.* v. *Commissioner,* 128 F. 2d 986 (C. C. A. 1st), certiorari denied, October 26, 1942, No. 410, this Term. The taxpayer's right to the deduction depended upon its showing the reasonableness of the salaries. *E. g., Long Island Drug Co.* v. *Commissioner,* 111 F. 2d 593 (C. C. A. 2d), certiorari denied, 311 U. S. 680; *E. Wagner & Son* v. *Commissioner,* 93 F. 2d 816, 818 (C. C. A. 9th). The Commissioner's adverse determination was presumptively correct (see *Welch* v. *Helvering,* 290 U. S. 111, 115), and the Board of Tax Appeals, upon review of the evidence, concluded that the taxpayer had not sustained the burden of proving the Commissioner's determination to be erroneous. (R. 41–42.) The Circuit Court of Appeals therefore correctly held that in the absence either of any apparent unreasonableness in the ruling below or of relevant evidence "so compelling that the Tax Court was bound to accept it," the reduction was beyond the reach of its review (R. 66).

The decision is not in conflict, as the taxpayer asserts (Pet. 5, Br. 10), with *Ox Fibre Brush Co.* v. *Blair,* 32 F. 2d 42 (C. C. A. 4th), affirmed *sub nom. Lucas* v. *Ox Fibre Brush Co.,* 281 U. S. 115, *Capitol-Barg Dry Clean. Co.* v. *Commissioner,* 131 F. 2d. 712 (C. C. A. 6th), or *Toledo Grain & Milling Co.* v. *Commissioner,* 62 F. 2d 171 (C. C. A. 6th). These are cases in which the circuit courts of appeals concluded that the Board's determination of a reasonable salary allowance was not supported by the evidence; it is obvious, however, that they turned upon their own facts, and are not inconsistent with a different result on the facts here.

The courts, in these cases, appear to have relied in part upon an inference, or presumption, of reasonableness to be drawn from the directors' action in voting the salaries. But such action, of course, can not be conclusive on the issue (see *Ox Fibre Brush Co.* v. *Blair, supra,* at p. 45), and whatever weight may be given to it must vary with the particular circumstances involved. *Cf. L. E. Pinkham Med. Co.* v. *Commissioner, supra,* at p. 988. Here, as the Board pointed out, the taxpayer's directorate was composed of the recipients of the salaries and their father. The Board regarded this as "a factor not to be overlooked when considering the reasonableness of the salaries." (R. 42.) The cases cited clearly are not authority for the proposition that the directors' action in such circumstances would require reversal of a finding

by the Board that the taxpayer had not sustained the burden of overcoming the Commissioner's determination.

CONCLUSION

The decision below is correct, and there is no conflict. The petition for certiorari should be denied.

Respectfully submitted.

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